

## **INSTRUCTIONS AFTER JURY IS SWORN**

### **I. FUNCTION OF JUDGE AND JURY**

I want to speak to you briefly about the function of the judge in a criminal trial and your function as jurors.

You have been sworn as the jury to try this case. By your verdict, you will decide the disputed issues of fact that exist between the parties. By contrast, the court will decide the questions of law that arise during the trial. And before you retire to deliberate after the trial, the court will instruct you on the law that you are to follow and apply to the facts in reaching your verdict.

It is my responsibility to conduct the trial in an orderly, fair, and efficient manner, to rule upon any questions of law, and to instruct you as to the law that applies to this case. You can construe my function, that is, the function of the court, as that of a referee or an umpire. I have no personal or professional interest in how this case turns out. That is your decision. My job is to ensure that the court only receives legally admissible evidence, to tell you what the law is during and after the trial, and to settle any disputes between the attorneys during trial.

### **II. HOUSEKEEPING ITEMS**

**SEATS** – The seats that you are in now are the seats that you will take when you are in the courtroom. Please remember your seat order and the people sitting next to you.

***BADGES*** – You are all wearing juror badges. It is very important that your badges are always worn and visible, whether you are in the building or walking around town on your lunch break. You must always wear your badge because there are several people in and around the courthouse who might be attorneys or witnesses, and it is important that they know that you are a juror. The people involved with this case know that they may not speak to you, and they will not. But the badges put the public on notice that you are jurors, so it is important that your badges are always worn and visible.

***BUILDING*** – The building we are in was built in 1933, before the advent of modern air-handling equipment. So although the building staff does an excellent job regulating the temperature in this room, sometimes it does get a bit uncomfortable. You might want to bring a sweater if the air conditioning gets a bit too enthusiastic, and you may take off your jackets if you are too warm.

***HOURS IN SESSION*** – The hours of court are 8:00 AM to 5 PM. Generally, as I explained earlier, each day of trial will begin at 9:00 AM and conclude at 1:00 PM. Those times are approximations, and if we must run over a few minutes to come to a logical breaking point or quit a little bit early for the same reason, then we will do that. Please plan on arriving between 8:15 and 8:30 AM each day so we may begin and finish promptly.

**COURTROOM PROCEDURES** – You will see that there are water bottles in front of you. You will have short breaks throughout the day in the jury room. If there is anything else that you need, then please ask Ms. Winslow, either of the law clerks, or one of the other staff members. You will notice that we have 18 jurors. Six of you are alternates. You will find out which six of you are alternates at the conclusion of trial. We select alternate jurors because we know through life experience that people become sick or have accidents or emergencies. So we impanel “extra” jurors to be sure that this trial has the required number of jurors for deliberations. When you retire to deliberate, the case will be decided by a jury of 12.

**NOTE TAKING** – You may take notes during the trial. Of course, you are not required to. But if you do not take notes, then you should rely on your own recollection of the evidence, not the notes of another juror. Note-taking must not distract you from what happens during the trial. Also, your notes are not evidence in the case, and they must not take precedence over the independent recollection of the evidence received in the case. Your notes are only an aid to recollect and are not entitled to greater weight than your actual recollections or impressions as to what the evidence actually is. You may only disclose your notes to your fellow jurors. You will all be provided with notebooks that you may use during the trial. The notebooks must remain in the jury room at the end of each day. At the conclusion of the trial, your notes will be destroyed and will not be read by anyone.

### **III. OVERVIEW OF TRIAL**

Let me briefly explain the general order of procedure in the trial. First the attorney for the Government makes an opening statement in which they outline their theory of the case. The attorneys for Defendants may then make an opening statement or they may reserve it until later. These opening statements are not evidence and are only intended to assist you in understanding the viewpoints and claims of the Parties.

After opening statements, we begin taking the evidence. The Government—or prosecution—presents its evidence first. They may call witnesses and may offer exhibits such as documents or physical objects. The Defendants have a right to cross-examine witnesses called by the Government in order to test the truth and accuracy of their testimony, or to elicit testimony favorable to the Defense. Following the Government's presentation, the Defense has an opportunity to present evidence. And the Government has a similar right to confront this evidence and cross-examine any Defense witness. But, as explained, Defendants are not obligated to produce any evidence whatsoever. The law does not require criminal defendants to prove their innocence or to produce any evidence. The burden is—at all times—on the Government to prove each Defendant's guilt beyond a reasonable doubt.

After all the evidence has been presented, I will give you preliminary final instructions with respect to the law. After these instructions, the attorneys for both

the Government and Defendants will have an opportunity to present closing arguments in support of their case. Just like in opening statements, the Attorneys' remarks throughout closing arguments are not evidence and are, instead, intended to assist you in understanding the evidence and the theory of each party. You must base your decision only on the evidence.

#### **IV. DELIBERATION & CONSIDERATION OF EVIDENCE**

Following closing arguments, I will give you instructions on the manner of your deliberations. And you will then retire and deliberate on your verdict. You will do that by applying the law, as I give it to you, to the facts as you find them to be.

The function of the jury is to determine the facts. You are the sole and exclusive judges of the facts, and you alone determine the weight, the effect, and the value of the evidence, as well as the credibility of the witnesses. You must consider and weigh the testimony of all witnesses who appear before you, and you alone are to determine whether to believe any witnesses, and the extent to which any witness should be believed. It is your responsibility to consider any conflicts in testimony that may arise during the course of the trial. Your decision as to any fact in the case is final. On the other hand, it is your duty to accept the law as the court states it to you.

Your determination of the facts of this case must be based only upon the evidence which is offered and received in this courtroom. Evidence consists of the

sworn testimony of the witnesses. It may also include exhibits, which may be documents or other physical objects. It may also include some things which the court simply instructs you to consider as evidence. The questions the attorneys will ask witnesses are not themselves evidence. It is the answers of the witnesses that provide the evidence.

Your function as the jury, of course, is equally important as the function of the court and the attorneys. You should give careful attention to the testimony as it is presented for your consideration. You should keep an open mind and not form or express any opinion about the case until after you have heard all the evidence, the closing arguments of the attorneys, and the instructions as to the law; and until you have retired to the jury room to consider your verdict.

#### **V. DISCUSSION PROHIBITED**

From this point forward, you must not discuss the case with anyone, not even members of your own family or your fellow jurors. It would be unfair for you to discuss the case among yourselves or with family or friends before you retire to consider your verdict.

So you may tell your family and friends that you have been selected as a juror, but then you must tell them that you are under instructions from the court that you are not to discuss the case with them until the court permits you to do so.

After the case is submitted to you for deliberations, you still must discuss it only when the court instructs you to, and only in the jury room and in the presence of all your fellow jurors.

When this trial is over, you may discuss the case with anyone you wish. Until that time, we ask that you control the natural desire to discuss the case both here and at home.

## **VI. OUTSIDE EVIDENCE PROHIBITED**

The only information that you will receive about this case will come to you while you are all together as a jury in the presence of the court, the attorneys, and all the parties involved. You must not consider any information that may come to you outside this courtroom.

So you must not read newspaper articles, if there are any, relating to the trial. You must not watch or listen to television and radio comments or accounts, if there are any, of the trial while it is in progress.

You must not visit any scene that is mentioned in the evidence of this trial. If it should become necessary that you should visit a scene or place, you will be taken as a group, under the supervision of the court. You must not consider as evidence any personal knowledge you have of a scene or a place mentioned in the evidence.

You must not make any investigation on your own about the case, the witnesses, the parties, or the attorneys. I know that many of you have smartphones,

tablets, and laptop computers, and that you use them in daily life to research many issues, but you may not use them during the case to conduct any research about the case or to communicate any information about the case.

## **VII. OBJECTIONS**

A trial follows long-established federal rules of procedure and evidence. The attorneys are trained in these rules and from time to time make objections and motions. I will rule on such objections and motions. Most of the time, I will make those rulings in your presence. But you should not conclude from any of my rulings that I have an opinion on the case or that I favor one side or the other. If I sustain an objection to a question and do not permit a witness to answer, then you should neither guess what the answer might have been nor draw any inference from the question itself.

## **VIII. CLOSED HEARINGS**

At times, the attorneys and I are required by law to take up matters of objections and motions outside your hearing. We may take care of such matters at the bench, or I might excuse you so that we can take care of them in the courtroom. Normally, those are purely procedural matters having nothing to do with your duties as finders of fact. They are conducted in your absence for the convenience of the parties and, also, to avoid any confusion with questions of procedural law that do not relate to matters that you are to decide. It is impossible to predict when such a

conference might be required or how long it will last. I shall conduct those conferences to take as little of the jury's time as possible.

## **IX. INSTRUCTIONS THROUGHOUT TRIAL**

I might give you additional instructions during the trial, and I will give you detailed instructions at the end of the trial. All those instructions are important because, together, they state the law that you must apply to this case.

## **X. RECESS**

During this trial, we will take recesses, which allow you to separate and go about your personal affairs. During recesses, you must not discuss the case among yourselves or with anyone else. Nor should you allow anyone to say anything to you or in your presence about this case. If anyone does try to say anything to you or in your presence about this case, then you must advise them that you are on the jury hearing the case and also ask them to stop. If they do not stop, then you should advise the court upon your return from the recess.

## **XI. INABILITY TO HEAR WITNESSES OR SEE EVIDENCE**

Please let me know immediately by raising your hand if you cannot hear a witness or see what is being demonstrated.

We will now dismiss you for the day, and begin with opening statements and the government's first witnesses on **Monday**. Remember, over the weekend you may tell others you were selected for a jury, but you may not discuss the case with anyone until you have reached a verdict. We look forward to seeing you **Monday morning**.